TEACHERS' RETIREMENT BOARD

REGULAR MEETING

SUBJECT: Update on Federal Legislation — ITEM NUMBER: 7b

ATTACHMENT(S): 1

ACTION: ________ — MEETING DATE: November 9, 2000

INFORMATION: X — PRESENTER: Ed Derman

SUMMARY

Relief from Penalties for the CalSTRS Medicare Part A Premium Payment Program

The Medicare "give-backs" legislative package agreed to by congressional negotiators includes the CalSTRS-sponsored provision for relief from the Medicare Part A late enrollment penalty. Under this proposal, the Part A penalties charged to CalSTRS for a member whose Part A premium was being paid by CalSTRS would be reduced by any Medicare Part A payroll taxes paid by the member and his or her employer during any of the member's employment. The House Ways and Means Health Subcommittee Chairman, Rep. Bill Thomas (Bakersfield), and the ranking subcommittee Democrat, Rep. Pete Stark (Fremont), championed the CalSTRS penalty relief proposal and made it a bipartisan issue. Although the Clinton Administration expressed concerns with other aspects of the Medicare package, it does not appear to have any objection to the CalSTRS provision. In addition, as of October 20, the Administration appeared to be signaling that any concerns they might have on the overall bill could be worked through.

Elk Hills Compensation

On October 10, CalSTRS received a $36 million wire transfer from the Federal government in payment of the FY 2000 installment of Elk Hills compensation. On October 11, the President signed into law the FY 2001 Interior Appropriations legislation. This legislation provides funding for the third $36 million Elk Hills installment, which is due October 1, 2001. The third installment will bring CalSTRS' total to $108 million of the $320 million that is due under the settlement agreement with the Federal government.

Pension Portability Legislation

H.R. 1102 is currently pending before Congress and has strong bipartisan support. As of October 20, however, the prospects for a final year-end tax package agreed to by the President and the congressional leadership are murky. If there is a year-end tax bill signed into law, the pension provisions are expected to be in it. If signed into law, the measure would

- Increase the annual benefit limits under Section 415 from the current $135,000 to $160,000,

- Increase the compensation limit for determining final compensation from $170,000 to $200,000 annually,
- Facilitate portability among various types of governmental plans, including defined benefit, defined contribution, Section 403(b), and governmental Section 457 plans, and Individual Retirement Accounts (IRAs), and
- Permit the transfer of funds in Section 403(b) accounts to purchase service credit in retirement plans.

MEMORANDUM FOR
THE CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

Washington Monthly Report

Well, we're still horsing around back here in Washington, with the light at the end of the tunnel moving farther away as Congress must repeatedly enact short-term extensions of budget authority to keep the Federal government running while the necessary appropriations bills are ironed out. Adjournment of Congress could now occur as late at Halloween – an apt metaphor in the eyes of some.

Legislative Relief from the Medicare Late Enrollment Penalty for the STRS Medicare Part A Premium Payment Program

We are pleased to report that after a very significant legislative effort, the Medicare "give-backs" legislative package agreed to by Congressional negotiators includes the STRS provision for relief from the Medicare Part A late enrollment penalty.

As you know, we have been working with key Congressional decisionmakers to explore the possibility of relief from the Medicare late enrollment penalties for the new STRS Medicare Part A premium payment program. The penalties would apply with respect to STRS retirees over age 65 who become enrolled in Medicare for the first time under the new State program. We have been seeking to have Medicare penalty relief included in a legislative package, known as the Medicare "give-backs" legislation, being developed to ameliorate the unexpectedly harsh Medicare reimbursement cutbacks for health care providers under the Balance Budget Act of 1997.

After some initial political soundings on Capitol Hill, the substantive approach we took, in coordination with STRS staff, was to focus on the Medicare Part A late enrollment penalty. The late enrollment penalty is intended to serve a number of policy purposes. First, the cost of providing Medicare coverage for a person who waits past age 65 to enroll is understandably higher, as a matter of insurance. Second, the late enrollment penalty helps guard against adverse selection by those who wait until they are seriously ill to enroll in the Part A hospitalization coverage.

In response, we have made an argument about practical impact. We have pointed out that paying the full Part A premium of $3,600 has proven to be a daunting task for a significant number of current retirees living on modest pensions who ultimately have been unable to afford Part A coverage and hence have not enrolled. There has been some sympathy with this argument, but it does not carry enough weight to warrant a flat waiver of the late enrollment penalty, even in a case such as this where the State is perceived as "doing the right thing".

Accordingly, in consultation with STRS staff, we suggested to key Members of Congress the following approach. The approach recognized the fact that a significant number of the STRS retirees likely had at least some other, Medicare-covered employment during the summers or otherwise during their careers, but less than the 40 quarters for premium-free Medicare or the 30 quarters for reduced Part A premiums. Under the approach, the otherwise applicable Part A would be offset by the amount of Medicare payroll taxes paid in by the retiree and the retiree's Medicare-covered employer over the course of his or her career. Otherwise, we have maintained, the retiree would get no "credit" or benefit for what could be thousands of dollars of payroll taxes paid into the Medicare trust fund on his or her behalf. This offset approach to the Medicare Part A late enrollment penalty resonated with key Members of Congress and gave life to the legislative effort for penalty relief under Part A.

The case for relief under the Part B penalties did not sell on Capitol Hill, in large part because the Part B premiums are a modest $40+ per month. It was difficult to persuade Congressional decisionmakers that there was a compelling reason for the failure to sign up for Part B.

After months of effort on Capitol Hill, the STRS Medicare Part A penalty relief provision was finally included in the Medicare "give-backs", legislation reported out unanimously by the House Ways and Means Health Subcommittee on October 3. While that was a major hurdle to surmount, it was only the beginning.

The Ways and Means Medicare legislation had to be reconciled with the version of the Medicare "give-backs" legislation reported out by the House Commerce Committee, which shares jurisdiction over Medicare with the Ways and Means Committee. This reconciliation of the differing versions was complicated by the fact that the Commerce Committee had acted first, before the Ways and Means Health Subcommittee, and had already spent the entire $26 billion set aside in the budget for the two Committees to spend in total the Medicare "give-backs" legislation. The Ways and Means Health Subcommittee then proceeded to spend the $26 billion again in a different way. After somewhat perilous negotiations to reconcile the Commerce and Ways and Means bills, an overall agreement was reached on a single House bill. The House bill included the STRS Medicare Part A penalty relief provision.

Then it was a matter of reconciling the House Medicare "give-backs" package with the Senate Finance Committee package. The Senate Finance Committee GOP package did not contain the STRS penalty relief provision. We had become a pawn in a bigger game. The Senate had taken this approach in order to gain a bargaining chip with House Ways and Means Health Subcommittee Chairman Bill Thomas (R-Bakersfield) in the House-Senate discussions over a final package. (The Senate Finance Democratic version of the "give-backs" legislation had included the STRS penalty relief provision at the behest of Senator Feinstein. However, the final Senate GOP package did not include the provision.)

The House-Senate discussions went on for some time behind closed doors. Finally, an agreed version of the Medicare "give-backs" legislation was hammered out by the Congressional negotiators. While the details of the final legislation have not been publicly disclosed and are not even widely available on Capitol Hill, we have been advised by key Congressional participants that the final legislation agreed upon by the Congressional negotiators includes the STRS Part A penalty relief provision. The Medicare "give-backs" package is seen as "must do" legislation to be enacted before Congress adjourns.

STRS and its retiree members owe a huge debt of gratitude to Rep. Bill Thomas (R-Bakersfield), who chairs the House Ways and Means Health Subcommittee and championed the STRS penalty relief proposal. He also is the Member of Congress principally responsible for STRS's $320 million Elk Hills recovery from the Federal government (see update immediately below). Strong thanks goes also to Rep. Pete Stark (D-Fremont), the ranking Democrat on the Ways and Means Health Subcommittee, who made the STRS penalty relief provision a priority from the Democratic side and thus lent the provision bipartisan support.

The Administration is concerned that under the "give-backs" legislation health maintenance organizations (HMOs) receive a disproportionate share of the "give-backs" without sufficient accountability and is threatening to veto the "give-backs" legislation unless the Administration's concerns are addressed. We have been in touch with senior officials of the Health Care Financing Administration (HCFA), which administers Medicare, and it does not appear that HCFA will have any objection to the STRS Part A penalty relief provision. At this juncture, the Administration seems to have signaled that its concerns on the overall "give-backs" bill can be worked through.

Elk Hills Compensation

On October 10, STRS received a $36 million wire transfer from the Federal government in payment of the FY 2000 installment of Elk Hills compensation. We are pleased to report that the next day, President Clinton signed into law the FY 2001 Interior Appropriations legislation providing funding for the third $36 million Elk Hills installment, due October 1, 2001. With this third installment, STRS will have crossed the $100 million mark for Elk Hills cash-inhand, collecting $108 million of the $320 million that is due in annual installments to STRS under the Elk Hills settlement agreement with the Federal government.

Pension Portability Legislation

Legislation (H.R. 1102) is pending before Congress that would increase various benefit limits and facilitate portability among various types of governmental plans, including defined benefit, defined contribution, section 403(b), and governmental section 457 plans, and Individual Retirement Accounts (IRAs). This legislation was described in detail in the August Monthly Report.

The measure has strong bipartisan support. The prospects for a final year-end tax package agreed to by the President and the Congressional Leadership remain murky, as part of the overall flux of these waning days of the Congressional session. If there is a year-end tax bill signed into law, the pension provisions are expected to be in it.

John S. Stanton

October 20, 2000
Washington, D.C.